

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ALEXUS MURPHY, MARKITTA
WITCHER, AND
DIANE HAINES,

Plaintiffs

v.

CASE NO. 2:22-CV-12159-DML
HON. DAVID M. LAWSON

ACTIVE INTEREST MEDIA, INC.,

Defendant.

**DEFENDANT ACTIVE INTEREST MEDIA, INC.’S MOTION AND
INCORPORATED BRIEF FOR ADJOURNMENT OF
RULE 16 SCHEDULING CONFERENCE AND STAY OF DISCOVERY**

Defendant Active Interest Media, Inc. (“AIM”) respectfully moves, by and through its undersigned counsel, to adjourn the currently-scheduled November 28, 2022 Rule 16 scheduling conference and stay all discovery pending a determination of AIM’s motion to dismiss the instant action, which will be filed on or before November 21, 2022, and states as follows:

1. Pursuant to Local Rule 7.1(a), counsel for AIM conferred with counsel for Plaintiffs on November 4, 2022. AIM’s counsel explained the nature

of this motion and its legal basis and requested but did not obtain concurrence in the relief sought.

WHEREFORE, for the reasons set forth in detail in the incorporated brief below, AIM respectfully requests that the Court adjourn the Rule 16 scheduling conference currently scheduled for November 28, 2022 and stay all discovery until after it decides AIM's motion to dismiss the complaint or, if Plaintiffs file an amended complaint in response to that motion under Fed. R. Civ. P. 15, until after it decides AIM's motion to dismiss the amended complaint.

BRIEF IN SUPPORT OF MOTION

A. Statement of Issue Presented

Should the Rule 16 scheduling conference in this action, currently scheduled for November 28, 2022, be adjourned and all discovery stayed pending a determination of AIM's motion to dismiss the complaint, or if Plaintiffs amend their complaint pursuant to Fed. R. Civ. P. 15, until the determination of AIM's motion to dismiss the amended complaint?

Defendant's Answer: Yes.

B. Controlling Authority

Fed. R. Civ. P. 16

Fed. R. Civ. P. 26

C. Brief

Plaintiffs filed the current action on September 12, 2022, and their counsel voluntarily dismissed substantially the same action (with different named plaintiffs) in the United States District Court for the Western District of Michigan on September 14, 2022, in the face of AIM's motion to dismiss the first amended complaint. *Taylor v. Active Interest Media, Inc.*, Case No. 1:22-cv-00447 (W.D. Mi.). AIM's motion to dismiss in the Western District of Michigan case addressed plaintiffs' pleading deficiencies as well as the fact that none of those plaintiffs had been subscribers to an AIM publication during the relevant time period and thus lacked standing to sue.

Refiled in a new forum with new named plaintiffs, Plaintiffs' counsel no doubt hopes that their forum shopping will keep their action alive in the instant matter. But AIM will be moving to dismiss this action too and believes, if history repeats itself, that Plaintiffs' counsel will amend their complaint pursuant to Fed. R. Civ. P. 15 in response to AIM's motion to dismiss, as they are entitled to do.

In light of the above, this means that the potential dismissal of this action will be a long time coming. Allowing discovery to begin now would be costly to AIM and could provide Plaintiffs with an undue litigation advantage as they strive to frame a viable complaint.

Significantly, shortly after Plaintiffs filed the instant action, on October 11, 2022, Judge Stephen J. Murphy, III dismissed a substantially similar action with prejudice under Rule 12(b)(6), holding that plaintiffs had failed to adequately plead disclosure of their private information. *Nashel v. The New York Times Company*, Case No. 2:22-cv-10633, slip op. (Oct. 11, 2022). AIM believes that this action should likewise be dismissed.

WHEREFORE, AIM respectfully requests that the Court adjourn the Rule 16 scheduling conference currently scheduled for November 28, 2022 and stay all discovery until after it decides AIM's motion to dismiss the complaint or, if Plaintiffs file an amended complaint in response to that motion under Fed. R. Civ. P. 15, until after it decides AIM's motion to dismiss the amended complaint.

Dated: November 9, 2022

Respectfully submitted,

/s/ Deborah H. Renner

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Attorneys for Defendant

ACTIVE INTEREST MEDIA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2022, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

/s/ Deborah H. Renner

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